

1  
2  
3  
4

5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7  
8 MARCUS DANIEL CHAVARRIA, No. C 01-02242 SI  
9 Petitioner,  
10 v.  
11 JIM HAMLET, WARDEN,  
12 Respondent.

---

**ORDER RE MOTIONS**

14 Petitioner Marcus Chavarria has moved for appointment of counsel and for extension of time  
15 to file his traverse (reply) in support of his petition for a writ of habeas corpus. Respondent, Warden  
16 Jim Hamlet, has moved for a third extension of time to file an answer to the habeas petition. For the  
17 reasons set forth below, the Court hereby GRANTS petitioner's motions for appointment of counsel and  
18 for extension of time, and DENIES as moot respondent's motion for extension of time.

19

20 **DISCUSSION**

21 The Court previously denied petitioner's pro se habeas petition. Petitioner appealed to the Ninth  
22 Circuit, and the Court appointed Neil Rosenbaum to represent petitioner in his appeal. At petitioner's  
23 request, the Ninth Circuit dismissed his appeal and remanded the case back to this Court so petitioner  
24 could seek leave to amend his original habeas petition. This Court subsequently granted petitioner's  
25 motion for leave to file an amended habeas petition, and noted that Mr. Rosenbaum's representation of  
26 petitioner had ended upon remand from the Ninth Circuit. Petitioner now seeks re-appointment of Mr.  
27 Rosenbaum as counsel.

28 A district court may appoint counsel to represent a habeas petitioner whenever "the court

1 determines that the interests of justice so require" and that the petitioner is "financially unable to obtain  
2 adequate representation." 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the  
3 discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986).

4 Petitioner has stated in a sworn declaration that he is indigent and unable to understand legal  
5 proceedings. Moreover, Mr. Rosenbaum has filed a letter with the Court requesting that he be  
6 reappointed as petitioner's counsel on the grounds that petitioner is indigent, "functionally illiterate and  
7 has no education in law," and has no alternative way to retain counsel. In light of these representations,  
8 the Court concludes that it is appropriate to appoint Mr. Rosenbaum as petitioner's counsel and  
9 GRANTS petitioner's motion for appointment of counsel. (Docket No. 42).

10 The Court GRANTS petitioner's motion for extension of time to file his reply. (Docket Nos.  
11 47,49). Petitioner's reply shall be filed **no later than November 18, 2009**. The Court DENIES as moot  
12 respondent's motion for extension of time to file an answer to the habeas petition (Docket No. 43), as  
13 respondent's answer was filed on August 17, 2009.

14

15 **IT IS SO ORDERED.**

16

17 Dated: October 20, 2009

18

  
\_\_\_\_\_  
SUSAN ILLSTON  
United States District Judge

19  
20  
21  
22  
23  
24  
25  
26  
27  
28